IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 27-04-2007

CORAM

THE HONOURABLE MR.JUSTICE S.TAMILVANAN

CRIMINAL APPEAL No.288 of 2001

State by
Inspector of Police
Vigilance and Anti Corruption,
Salem. ... Appellant

-vs-

V.Devarajan
Assistant Engineer,
(O & M), T.N.E.B,
Harur. ... Respondent

Criminal Appeal filed under Section 378 Cr.P.C. against the Judgment, dated 20.09.2000, made in C.C.No.111 of 1994 on the file of the I Additional District Judge cum Chief Judicial Magistrate, Dharmapuri at Krishnagiri.

For appellant : Mr. Hasan Mohamed Jinnah
Govt. Advocate (crl. side)

For respondent : Mr. S.Shanmughavelayutham
Senior Counsel for
Mr.R.Anand

J U D G M E N T

This Criminal Appeal has been preferred against the judgment of acquittal, dated 20.09.2000, recorded in C.C.No.111 of 1994 on the file of the I Additional District Judge cum Chief Judicial Magistrate, Krishnagiri.

2. The brief facts of the case :

The respondent / accused, who was working as Assistant Engineer in the Tamil Nadu Electricity Board, Hosur Division, received an illegal gratification of Rs.500/- on 28.11.1991 at 4.50 p.m, in his office at Harur, for which he had demanded illegal gratification on 13.08.1993, 16.08.1991 and 26.11.1991 from one Kalyanasundaram Tamileripatty. With the above said averments, charges were framed against the respondent / accused, punishable under Sections 7 and 13 (1) (d) r/w 13 (2) of Prevention of Corruption Act, 1988. The trial court, after considering the

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oral and documentary evidence adduced and the arguments advanced by both sides, has found the respondent / accused not guilty under Sections 7 and 13 (1) (d) r/w 13 (2) of Prevention of Corruption Act. Aggrieved by the judgment recording acquittal, the appellant / complainant has preferred this appeal.

3. Mr.Hasan Mohamed Jinnah, learned Government Advocate (crl. side) appearing for the appellant submits that despite the fact, the guilt against the respondent / accused having been proved, the trial court recorded acquittal. According to the learned Government Advocate, the alleged guilt against the accused has been proved by the evidence of official and independent witnesses. Further, he contended that the competent authority has granted sanction for the prosecution and the respondent / accused cannot plead for acquittal, even on the ground of irregularity in the sanction accorded by the competent authority. In support of his contention, the learned Government Advocate cited the following decisions :

1. M.A.Thonge vs. State of Maharashtra, 1993 Cri.L.J. 3796
2. C.K.Damodaran Nair vs. Govt. of India, 1997 Crl.L.J. 739
3. M.W.Mohiuddin vs. State of Maharashtra, 1995 SCC (Cri) 546
4. B.Hanumantha Rao vs. State of A.P., 1992 Crl.L.J. 1552
5. Chaturdas vs. State of Gujarat, AIR 1976 SC 1497
6. Jwala Prasad vs. State of U.P, 1997 Crl.L.J. 1103
7. Ram Swaroop Rathore vs. State of M.P, 2000 Crl.L.J.1882
8. C.S.Krishnamurthy vs. State of Karnataka, 2005 SCC (Cri) 923
9. M.O.Shamsudhin vs. State of Kerala, 1995 SCC (Cri) 509
10. State of U.P, vs. Zakaullah, AIR 1998 SC 1474

4. Per contra, Mr.S.Shanmughavelayutham, learned Senior Counsel appearing for the respondent / accused submitted that the charges leveled against the respondent / accused had not been established by the prosecution, and hence, the trial court rightly held that the respondent / accused is not guilty. The learned Senior Counsel further contended that there was no proper sanction by the competent authority, as required under Section 19 (1) (c) of the Prevention of Corruption Act, 1988. According to him P.W.5, the sanctioning authority has mechanically accorded sanction for the prosecution against the appellant, based on the opinion of the legal advisor, without applying his mind and he drew the attention of this Court to the finding of the trial court, and the corresponding evidence adduced by P.W.5. The learned Senior Counsel further contended that there is no independent witness to corroborate the evidence of P.W.1 and the evidence of P.W.1, the defacto complainant, would also create serious doubts about the alleged occurrence. According to the learned Senior Counsel, P.W.1 has admitted that one Marappa Gounder had applied for the aforesaid electricity service connection for his motor pumpset in the year 1980, since necessary documents required for granting service connection were not produced, the same was pending for a long time and that the respondent / accused asked P.W.1 to produce the kist receipts and returned the records to himself, to submit the same with necessary documents and

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therefore, there can be no necessity for P.W.1 to give illegal gratification to the appellant. In support of his contention, the learned Senior Counsel for the respondent relied on the following decisions :

1. Peerappa vs. State of Karnataka, (2006) 1 SCC (Cri) 586
2. Kashiram vs. State of M.P, 2002 SCC (Cri) 68
3. Patel Hiralal Joitaram vs. State of Gujarat, 2002 SCC (Cri) 1
4. Chandu vs. State of Maharashtra, 2001 (4) Scale 590
5. Dhanna vs. State of M.P, 1996 SCC (Cri) 1192
6. D.Venkatesan vs. State, 1997 Crl.L.J. 1287
7. Aravamuthan vs. State, 1997 MLJ (Crl) 243
8. State of T.N. vs. M.M.Rajendran, (1998) 9 SCC 268
9. Mansukhlal Vithaldas Chauhan vs. State of Gujarat, AIR 1997 SC 3400
10. Mohd. Iqubal Ahmed vs. State of A.P, AIR 1979 SC 677
11. S.Narayana Pillai vs. State of T.N, 1993 Crl.L.J.1303
12. G.V.Nanjundiah vs. State (Delhi Administration) 1998 SCC (Cri) 77
13. Suraj Mal vs. State (Delhi Administration), AIR 1979 SC 1408
14. Darshan lal vs. Delhi Administration, 1974 SCC (Cri) 73
15. Gulam Mahmood A.Malek vs. State of Gujarat, 1981 SCC (Cri) 586
16. Sat Paul vs. Delhi Administration, 1976 SCC (Cri) 160
17. Panalan D.Rathi vs. State of Maharashtra, 1980 SCC (Cri) 121

5. In the decision, Mansukhlal Vithaldas Chauhan vs. State of Gujarat, reported in AIR 1997 SC 3400, the Hon'ble Supreme Court with regard to .Sanction. as held as follows :

> "19. Since the validity of .Sanction. depends on the applicability of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation, it necessarily follows that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take a decision one way or the other. Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration. If it is shown that the sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or constraint to grant the sanction, the order will be bad for the reason that the discretion of the authority .not to sanction. was taken away and it was compelled to act

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mechanically to sanction the prosecution."

6. In the decision, Mohd. Iqubal Ahmed vs. State of A.P, reported in AIR 1979 SC 677, the Hon'ble Apex Court has held that "The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to Government servants against frivolous prosecutions and must therefore be strictly complied with before any prosecution can be launched against the public servant concerned."

7. In the decision, State of T.N. vs. M.M.Rajendran, reported in (1998) 9 SCC 268, the Hon'ble Apex Court has ruled that failure to place before the detaining authority all the relevant materials, including the statements recorded by I.O and in such circumstance, sanction accorded under Section 19 of Prevention of Corruption Act, on the basis of the report of Vigilance Department as invalid.

8. In the light of the decisions of the Hon'ble Apex Court, it is quite clear that for the grant of sanction under Section 19 of Prevention of Corruption Act, the sanctioning authority should have applied its mind, after gone through the materials and documents, in order to accord sanction, since the same is not an empty formality, but the same was the protection to Government servants against frivolous prosecutions.

9. The trial court, considering the evidence of P.W.5 and Ex.P.13, has held that he had accorded sanction, only based on the opinion of the legal advisor. The sanctioning authority, P.W.5 would state in his evidence that on 31.07.1993, he had perused the records, but in his cross-examination, he would state that he was satisfied, based on the report of the legal advisor, but the same is not available in Ex.P.13. He has also admitted in his cross-examination that even the name of the legal advisor was not available in the case file. Considering the evidence available on record, the trial court has held that Ex.P.13 is not a valid sanction. The evidence of P.W.5 with reference to Ex.P.13, sanction order, as found by the trial court would show that the authority has mechanically accorded sanction, based on the opinion given by the legal advisor, without applying his mind, based on the materials placed before him. Therefore, in the light of the decisions of the Hon'ble Apex Court, I am of the considered view that there is no error in the finding of the court below that there is no valid sanction, as contemplated under Section 19 of the Prevention of Corruption Act.

10. In the decision G.V.Nanjundiah vs. State (Delhi Administration), reported in 1988 SCC (Cri) 77, the Hon'ble Supreme Court has held that in a case under Prevention of Corruption Act, as follows, "The question as to anything offer of any bribe and recovery of the same from the accused should be considered along with the other material and circumstances, one of which the question whether any demand had made by the appellant for the bribe. When it is found that no such demand was made by the accused the prosecution has given a false story, the Court will

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come to the conclusion that the allegation of payment of bribe to and recovery of the same from the accused with suspicion."

11.The Full Bench of the Hon'ble Supreme Court in the decision Kashiram vs. State of M.P, reported in 2002 SCC (Cri) 68, has held as follows that "Though the High Court while hearing an appeal against an acquittal has powers as wide and comprehensive as in an appeal against a conviction and while exercising its appellate jurisdiction the High Court can reappraise the evidence, arrive at findings at variance with those recorded by the trial court in its order of acquittal and Court is . if two views are reasonably possible, one supporting the acquittal and the other recording a conviction, the High Court would not interfere merely because it feels that sitting as a trial court its view would have been one of recording a conviction. It follows as a necessary corollary that it is obligatory on the High Court while reversing an order of acquittal to consider and discuss each of the reasons given by the trial court to acquit the accused and then to dislodge those reasons."

12. Learned Government Advocate (Crl. side) relying on the decision, State of U.P vs. Zakaullah, reported in AIR 1998 SC 1474, contended that in a trap case, complainant's evidence corroborated by the evidence of trap officer cannot be rejected merely because he was aggrieved against the bribe taker.

13. Apart from establishing the legality of the sanction order, the prosecution should prove the demand of illegal gratification made by the accused, receipt of such illegal gratification or bribe and the recovery of the same from him.

14. As found by the trial court, I am of the considered view that the evidence of P.W.1 itself is doubtful with regard to the alleged demand and acceptance of illegal gratification by the respondent / accused.

15. As per the evidence of P.W.3, the Village Administrative Officer, originally S.No.46/4 belong to Marappa Gounder and it was subsequently, partitioned between his two sons and S.No.46/4B was allotted to P.W.1, Kalyanasundaram and on 16.08.1991, according to P.W.3, P.W.1 met him and requested him to prepare an application in his name, instead of the name of his father, Marappa Gounder. As per the evidence of P.W.1, in his cross-examination, the application given by him had eventually to go on for a long process, since, as admitted by P.W.1, records were returned to him for furnishing kist receipts and for proper compliance. According to P.W.1, the returned records were only with him and he did not return the same to the respondent / accused. Therefore, as found by the trial court, the alleged demand of illegal gratification itself is doubtful.

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16. The trial court in its judgment has held that P.W.1 and P.W.2 have admitted in their evidence that the accused had returned back the documents, even on the date of the alleged trap. If the respondent / accused had really promised to do anything to P.W.1 on receipt of the illegal gratification of Rs.500/-, he would not have returned back the entire documents. The evidence of P.W.4, as discussed by the trial court would also support the case of the respondent / accused. The respondent / accused had not admitted that he had received the amount. According to him, P.W.1 threw the file containing a sum of Rs.500/-. P.W.1 in his evidence admitted that he had grudge against the respondent / accused, since he had returned the application on several occasions due to various reasons.

17. Considering the evidence both oral and documentary, I am of the considered view that there is no error in the finding of the trial court that the prosecution has not established the guilt against the respondent / accused beyond reasonable doubt.

18. As held by the Hon'ble Apex Court, while exercising appellate jurisdiction, though this Court can reappraise the evidence, arrive at finding at variance with those recorded by the trial court in its order of acquittal, if two views are reasonably possible, one supporting the acquittal and the other recording a conviction, this Court cannot interfere with the finding of the trial court, merely because another view can also be possible for convicting the accused.

19. On the facts and circumstances as discussed above, I hold that the prosecution has not established the guilt against the respondent / accused beyond reasonable doubt, as found by the court below and accordingly in my view, the appeal fails.

20. In the result, confirming the judgment of acquittal recorded by the trial court, the appeal is dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

tsvn

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To

1.The I Additional District Judge
cum Chief Judicial Magistrate, Dharmapuri
Krishnagiri.

2. The Inspector of Police
Vigilance and Anti Corruption,
Salem.

3. The Public Prosecutor
High Court of Madras, Chennai.

+ 1 CC To Mr. R.Anand, Advocate SR NO.31439

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